

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 17-cr-00281 (ERK)
: :
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
CARLOS MARTINEZ, : :
: :
Defendant : April 13, 2022
: 3:19 p.m.
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:

Breon S. Peace, Esq.
United States Attorney

BY: **Nadia Shihata, Esq.**
Elizabeth Geddes, Esq.
Assistant U.S. Attorneys
271 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant:

Anthony L. Ricco, Esq.
Steven Z. Legon, Esq.
20 Vesey Street, Suite 400
New York, NY 10007

Carlos M. Santiago, Esq.
The Law Office of
Carlos M. Santiago
11 Broadway, Suite 615
New York, NY 10004

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
RL.Transcriptions2@gmail.com

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1 THE CLERK: We're on for Criminal Cause for
2 Sentencing in 17-cr-281, *The United States v. Carlos*
3 *Martinez*.

4 Counsel, please state your appearances for the
5 record.

6 MS. SHIHATA: Good afternoon, your Honor.
7 Nadia Shihata and Elizabeth Geddes for the United States.

8 MR. RICCO: Good afternoon, your Honor.
9 Anthony Ricco, Carlos Santiago, Steven Legon for Carlos
10 Martinez.

11 THE COURT: Okay. Well, I'm not sure whether
12 I'm going to sentence him or not, but you can call it
13 sentencing. I just want to go through some of the legal
14 issues that have been raised so that we can get them
15 ironed out including God knows when I was getting emails
16 last night with submissions.

17 So how shall we organize this? I guess there
18 are pending motions. You moved for judgment of acquittal
19 and you've made other arguments. Why don't you take the
20 lead? I mean you want to take the lead?

21 MS. SHIHATA: I'm just happy to answer your
22 questions and Mr. Ricco can of course correct me if I get
23 it wrong. I don't believe any post trial motions on the
24 second trial were in fact filed so --

25 THE COURT: I thought he was asking for the

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1 paper that he filed not last night --

2 MS. SHIHATA: I think he alluded to the fact
3 that maybe down the line he may choose to file something
4 but at this point my understanding is we're prepared to
5 proceed to sentencing and of course Mr. Ricco can --

6 THE COURT: Maybe I didn't read it right. Do I
7 have this?

8 MS. SHIHATA: I have copies of everything.

9 THE COURT: I should have copies too. Do I
10 have his sentencing order?

11 (Pause in proceedings)

12 THE COURT: Or didn't mislay this document
13 which I'm talking the lawyer just sent me in April.
14 Where's the one before April 12th? Is April 12th your
15 last and only filing in relation to this?

16 MR. RICCO: Substantive, yes, Judge.

17 MS. SHIHATA: There's one earlier one, Judge.
18 I think it's dated -- filed on I think it was October 1st
19 or September 30, 2021. It's ECF docket number 129.

20 MR. RICCO: Yes. That's the defendant's
21 sentencing recommendation. That's 129. ECF document 130
22 is objections to the PSR. The next substantive filing
23 would have been the filing on the evening of the 12th.

24 THE COURT: Well that was yesterday.

25 MS. SHIHATA: Yes, your Honor.

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1 MR. RICCO: Yes.

2 THE COURT: But I thought I read something
3 before yesterday. In fact, you responded to it and you
4 even threw in a line that said he had only until -- I
5 mean that --

6 MS. SHIHATA: I'm sorry.

7 THE COURT: You said it's too late because he
8 didn't file it by April 20th.

9 MS. SHIHATA: Well also, he didn't file it.
10 There's a footnote or a sentence in the sentencing
11 recommendation that says something about that and the --

12 THE COURT: Right. And I need to see it. I
13 mean I thought you said it was too late and I thought he
14 said something to indicate that it wouldn't have been too
15 late. April 20, 2020 this court was for all practical
16 purposes in shutdown and it wasn't on for sentencing. I
17 don't want to get involved if he hasn't moved. But my
18 normal practice is invariably when a jury reaches a
19 guilty verdict, I give the defendant until the date of
20 sentencing to file any motions that have to be filed
21 within seven days of the verdict. It's almost automatic.
22 But if he didn't move, he didn't move. I thought I saw
23 it.

24 Okay. So you haven't moved. So what do you
25 want from me?

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1 MR. RICCO: Judge, we're prepared to go
2 forward. The issues that we would have raised in the
3 motion have been preserved. We had a sidebar about it.
4 Your Honor decided it was a legal issue and related to
5 the concept of whether or not a threat of force had to be
6 related to an exercise of force, not just a threat of
7 force.

8 THE COURT: Look, the government has
9 unnecessarily complicated this case as they usually do.
10 There were five separate incidents involving sexual
11 contact and for each one they use four separate statutes.
12 And that sort of complicates it. The one count, as I
13 view the verdict, the verdict was complicated by the fact
14 that there were two trials and probation used one
15 numbering and I think I had another one. Do you have the
16 verdict sheet? I'm just going to pull up the verdict
17 sheet that I gave to the jury because it's much easier
18 for me to deal with.

19 MS. SHIHATA: To the extent it's helpful,
20 Judge, in the government's October 28 --

21 THE COURT: It's not helpful the way you set it
22 out. You gave me one set and then something on the
23 bottom of it.

24 MS. SHIHATA: Just it shows the counts in both
25 the redacted indictment and the original.

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1 THE COURT: Yes, I know but I don't want it.

2 MS. SHIHATA: Okay. It's not helpful. That's
3 fine.

4 THE COURT: Just when I charged the jury I used
5 the verdict sheet that I gave them. And when I went back
6 to see what I charged the jury, it was useful for me to
7 be able to use the verdict sheet I gave them. Are you
8 going to be able to find it? I got it. Okay.

9 At the first trial the jury I believe convicted
10 the defendant of everything. I set aside the verdict I
11 guess on all of the counts except what I would call the
12 count involving the --

13 MR. RICCO: Ward?

14 MS. SHIHATA: Sexual abuse of a ward, your
15 Honor?

16 THE COURT: The ward, yes. The sexual abuse of
17 the ward which was not an issue and was not affected by
18 the Brady material.

19 Of the counts that were submitted to the jury,
20 the deprivation of rights, which also coincides with the
21 aggravated special sexual abuse as it must because I
22 charged the jury that in order to find deprivation of
23 rights they ultimately have to find as one element
24 aggravated sexual abuse. And so the verdict sheet is
25 consistent in that they found the defendant guilty on

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1 count 4 which is deprivation of rights, count 5 which is
2 the aggravated special abuse which coincides with date.
3 And then they also found him guilty of sexual abuse on
4 one of the counts that did not involve penetration. I'm
5 sorry, on one of the counts I think the second December
6 13, 2015 count only because they wanted to be consistent
7 all the way through.

8 But we're basically dealing with the same
9 element, the same critical element. And I don't see how
10 I can set aside the jury verdict. I don't say this is
11 not a troubling case which is why having tried the case
12 in 2019 I spent three of the last four days reading the
13 transcript. And there are aspects of the case that are
14 troubling including the telephone call that she had, what
15 a telephone call -- the investigation, what I'll call the
16 Facebook investigation which leaves serious questions as
17 to its purpose in my own mind. It seems to me that this
18 is a jury question. I can't set the verdict aside under
19 the normal standards of government that govern the jury,
20 jury verdicts notwithstanding that I find they are
21 troubling aspects in this case.

22 So now the other counts don't matter to the
23 calculation of the guidelines. They might matter if they
24 added anything to any of the guidelines in life where a
25 sentence within the guidelines would be relevant if the

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1 jury had found him guilty of five counts of forcible
2 rape, which they didn't. And I regarded the verdicts on
3 counts 3 to 15 as really -- it seems to me it doesn't
4 apply to what was charged. I don't believe -- I believe
5 that as charged and as she testified, the victim, she did
6 not consent because she was threatened or because of
7 fear. Possibly she may not have recorded it for that
8 reason. But she didn't testify, and you can find it for
9 me if you can, where she testified that the reason for
10 her consent was fear or force. In fact, if you take a
11 look at your own letter which describes in some detail
12 her testimony, let me see if I have that, it was all
13 force. He just used force each time in order to have
14 sexual relations with her. It wasn't caused by anything
15 other than his physical strength and his ability to rape
16 her.

17 MS. SHIHATA: May I respond, your Honor?

18 THE COURT: Yes. What I'm saying is it may not
19 affect the guidelines but I don't think it adds -- that
20 is the guidelines would still be life when I say that.
21 And I'm not even sure that it affects what sentence
22 within the guideline range because it's all the same
23 basic conduct. But go ahead. Take a look at page 4 of
24 your letter.

25 MS. SHIHATA: Sorry, which of the letters?

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1 THE COURT: I think it's your letter of October
2 28, 2021.

3 MR. RICCO: Okay. So your Honor --

4 THE COURT: These are all forcible rapes as you
5 described them. In your opening statement you refer to
6 them that way. Ms. Geddes was a little bit more subtle
7 and tried to work in fear and threats. But to the
8 extent -- I don't recall that she testified that that was
9 the reason how she came to engage in that. And I think
10 the statute, the only way the statute could be sensibly
11 read is it's a kind of forced consent, not by physical
12 force, but by threat of force.

13 In this case, if you read what you wrote, if
14 you read what you argued to the jury and what she
15 testified to, which is what you quote, on page 4 of your
16 letter you quote all the evidence, this was simply a
17 case, if you believe the testimony, where he physically
18 raped her. That's sort of the way I view those counts.

19 I don't know whether anybody thinks when they
20 draft an indictment about how the case is going to be
21 presented and what problems it's going to entail
22 particularly with a witness like this one. But that's
23 sort of my view of it.

24 So you know, for the purpose of sentencing, I'm
25 looking at this as a one count indictment, one count

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1 conviction, however I have to record it on whatever sheet
2 that the Sentencing Commission makes me file as their
3 bookkeeper.

4 MS. SHIHATA: So I'll be brief, your Honor, and
5 mostly state this for the record. But first of all, we
6 agree that the guidelines are driven by the convictions
7 regarding the deprivation of civil rights and the
8 aggravated sexual abuse that predicates it.

9 THE COURT: It's the same thing.

10 MS. SHIHATA: Correct.

11 THE COURT: It's the same thing.

12 MS. SHIHATA: I understand, Judge. I'm not
13 disagreeing with you. Where I do disagree is that it is
14 mutually exclusive that the assault, the sexual abuse in
15 this case could not be both through physical force, and
16 you're right, we lay out and we believe we do assert that
17 physical force was used for all of them.

18 THE COURT: That's her testimony. Her
19 testimony was -- the reason that I agreed to do it was it
20 was because I was afraid, he threatened to do something
21 to me if I didn't agree to, if I didn't acquiesce.

22 MS. SHIHATA: I understand, Judge.

23 THE COURT: And in fact I put down here -- but
24 go ahead, I don't want to delay you.

25 MS. SHIHATA: Judge, I fully understand that

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1 you disagree with me. That's of course fine, your
2 prerogative. But my point is simply that the case law
3 does not require just an explicit threat in order for the
4 sexual abuse counts to be well founded.

5 THE COURT: They may not. I'm not saying that
6 it does. I'm talking about what you charged him with and
7 what you proved and what her testimony was. The fact
8 that he has the ability to cause her harm, that to me is
9 almost the same thing as a ward, in the capacity of a
10 ward, in his capacity as a ward, he had the power to do
11 as (indiscernible).

12 I mean basically what you've done here is
13 totally confuse this case with the way you've charged.

14 MS. SHIHATA: Judge, I understand that's your
15 perspective. Respectively, the government disagrees.
16 Respectfully, Judge, there was evidence in the record
17 from which the jury could find the sexual abuse count. I
18 understand if your Honor disagrees.

19 THE COURT: Let me ask you this. Maybe I
20 missed it. Could you show me where she said that the
21 reason that I acquiesced, or she didn't acquiesce so she
22 wouldn't have even said that, but the reason that I had
23 sexual relations with him was because he threatened --

24 MS. SHIHATA: That's not the legal requirement,
25 Judge. It does not need to be that he said the words if

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1 you don't have sex with me I will put you in the SHU.
2 That is not what the case law requires and I'm not
3 suggesting that the evidence showed that explicitly.

4 THE COURT: No your case law that you cited to
5 me was the threat or the fear, it doesn't have to be.
6 Obviously, you know, in the way the statutes are written
7 if it's too much of a physical threat, it doesn't even
8 violate the statute that you've charged. But the statute
9 still requires that it caused the act to take place.

10 MS. SHIHATA: And an act can be caused to take
11 place by multiple things. Was there physical force? We
12 believe there was. But there was also --

13 THE COURT: There was, of course. I don't want
14 to say of course. The jury found, I accept the jury's
15 verdict. There are aspects of her testimony and the
16 evidence in this case that are problematic. But in terms
17 of the jury's verdict, I'm not arguing with it.

18 MS. SHIHATA: I understand, Judge, and I won't
19 belabor the point. I understand what you're saying.

20 THE COURT: Good. Mark, did I give you
21 something? There's actually an amendment to the statute
22 that's not directly relevant that was March 22nd. But I
23 believe one provision that was added that sort of helps,
24 it says "Engages in a sexual act that causes another
25 person to engage in a sexual act." And now I'm skipping

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1 the language we've argued about. "Without that other
2 person's consent to include doing so through coercion."
3 So it's the causing to do the particular act through
4 threats, fear or coercion.

5 But in any event, I found this accidentally
6 just by Shepardizing some of the cases that you cited in
7 your brief. And the Second Circuit case that you cite in
8 your brief is actually a case where I think the officer
9 testified that that was the reason why she consented.
10 I'm talking about the one in the Federal Appendix that
11 you cited in your brief.

12 MS. SHIHATA: That was a guilty plea, your
13 Honor, yes.

14 THE COURT: I'm sorry, guilty plea. Even
15 better.

16 MS. SHIHATA: I have nothing to add on this
17 point, your Honor. I will rest on our papers and --

18 THE COURT: Okay. So let's deal with what's a
19 reasonable sentence here.

20 MS. SHIHATA: Are you starting with me?

21 THE COURT: Whoever wants to talk about it.

22 MS. SHIHATA: Go ahead.

23 MR. RICCO: Oh, thanks. Judge, it's always
24 difficult to pick a place to start it sentencing. I
25 would share with the Court that as the Court can see from

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1 our submissions, sentencing submissions, document 129 and
2 130, we struggled with the issues that your Honor just
3 discussed as to how do the verdicts in this case
4 translate into a reasonable sentence given all of the
5 factors the 3553(a).

6 And so we laid those arguments out. I think
7 your Honor's had that. It's interesting, Judge, that the
8 jury in this case rejected the theory of force of the 15
9 counts that went to the jury.

10 THE COURT: Well, they rejected her testimony.
11 They essentially, on the counts that they acquitted,
12 which were forcible counts --

13 MR. RICCO: And your Honor --

14 THE COURT: -- went through the deprivation of
15 rights and the aggravated sexual abuse, they found that
16 she was not telling the truth. There's no other way to
17 explain that acquittal.

18 MR. RICCO: So your Honor, we looked at it from
19 the standpoint of mitigation in sentencing and how does
20 this verdict, how the underlying factors as spoken by the
21 jury apply here at sentencing. So it took a long time,
22 Judge. It took a long time, a lot of thought, a lot of
23 work. And I think we've laid that out.

24 So this is what I'd like to say, Judge. It's
25 very rare that we're here for sentencing with a defendant

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1 that we've spent so much time with. I mean length of
2 time. So Judge, when we started this case, Carlos
3 Santiago was just married, he had no kids.

4 THE COURT: With a wife that he was --

5 MR. RICCO: With a wife.

6 THE COURT: With a wife to whom he was married.

7 MR. RICCO: Married. That's correct. That's
8 Carlos Santiago. Okay? So here we are for sentencing.
9 He's still married but he's got three kids now.

10 THE COURT: And a grandchild.

11 MR. RICCO: Well, not yet.

12 THE COURT: Not yet? I thought there was a
13 grandchild too.

14 MR. RICCO: No, that's -- I'm talking about my
15 co-counsel, Santiago.

16 THE COURT: Oh, okay.

17 MR. RICCO: And I mentioned that because of the
18 breadth of the time period that we've had on this case.
19 And I know that oftentimes people view defense
20 perspective is just adversarial. They're just saying
21 that because they're the defendant and that's what
22 they're supposed to say. They could think that but the
23 reality is far from that. We've had a lot of time to
24 spend with Carlos Martinez. He has been in Essex County
25 Jail 59 months and a few weeks. Five years. He's been

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1 there under very harsh conditions. He was charged with a
2 sexual offense which makes serving time difficult in and
3 of itself, compounded by the fact that he's a law
4 enforcement officer made his housing situation very
5 difficult. And then I won't even get into COVID. But a
6 great deal of time was spent relating to Carlos Martinez
7 about what happened to him. How did this happen to you?
8 What's going on with your life? Because everything that
9 we've known about Carlos Martinez is that he signed up
10 for the Marine Corps coming out of the Red Hook projects
11 one week after his 18th birthday and he went into the
12 Marine Corps and served our country with distinction in
13 three combat circumstances. He's decorated and came out
14 of the service with post stress disorder syndrome.

15 THE COURT: Well there were three theaters of
16 violent war that he was involved with.

17 MR. RICCO: Yes.

18 THE COURT: At least if I recall from your
19 submission.

20 MS. SHIHATA: Yes, Judge.

21 THE COURT: He was in Libya and Kuwait and what
22 was the third?

23 MR. RICCO: He's got Sharp Edge, which was in
24 Africa. Just Cause, which is in Panama. And then he's
25 in Desert Storm, which is the Gulf War.

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1 And he, as a teenager, he's distinguishing
2 himself from the Red Hook Projects in a way that brought
3 great pride to his grandparents that raised him for the
4 most part, and his grandfather was in the military also.

5 And then he comes out of the military and goes
6 into the Bureau of Prisons. And Judge, the government --
7 listen, nobody is disregarding his conduct. But he goes
8 into the Bureau of Prisons and he is respected at the
9 highest level at the Bureau of Prisons. He's a superstar
10 there not because he wanted to be a superstar, but
11 because of his conduct and action. And so the officers
12 that testified all said Carlos Martinez was held in the
13 highest esteem at the jail. That testimony is there from
14 the three officers. I mean it's in our submission.

15 But also, Judge, Ms. Otis Delacruz testified
16 and she corroborated what the officer said. And who is
17 Ms. Otis Delacruz? She was a lady who was in that unit
18 with Maria on the 16th of April in particular. She had
19 been not called as a government witness and we know why
20 because she didn't support the theory. She testified
21 here that he always treated her with respect and dignity
22 as he did the other inmates. Now that's not to disregard
23 his criminal conduct, but it's to tell us that something
24 happened to him along the way.

25 And Judge, this is what you also don't know.

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1 Ms. Otis Delacruz, your Honor, we brought her here under
2 subpoena. We caught hell for that from one of her
3 daughters. She was a very sickly lady and her daughter
4 gave us hell for bringing her mother down. And so you
5 call the witness, you look at their sheet, you try to
6 figure out what's going on. And Judge, you know what we
7 discovered after the fact? That Ms. Delacruz shouldn't
8 have been in jail all that time period in the first
9 place. And so one of the things that I did was I had one
10 of my classmates in Boston look into her situation and he
11 filed an application for compassionate release for her.
12 And she's released. She's with her family. She was
13 deported. She's back in the Dominican Republic. She was
14 a courier who was represented by the lawyers who
15 represented the people that she worked for. They picked
16 her lawyer and she got the time, and they went on about
17 their business which were people dealing drugs.

18 But Ms. Delacruz was like telling the truth
19 about the officers she worked with and she was telling
20 the truth about the lady that she served time with who
21 testified here under the name of Maria.

22 So this guy who's respected by so many, and
23 while he was at the Bureau of Prisons, one day he's
24 coming to work and engaged in an act, which he received a
25 commendation for valor, a truck was ablaze dangling off

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1 the BQE right up the street from the jail and Carlos
2 Martinez runs, climbs up, carries the guy out of the
3 truck. I guess he saved his life. We don't know. The
4 guy didn't die. But he certainly removed him from peril.

5 And so what we know is the man before the Court
6 for sentencing is a man who throughout his life did
7 things to make people proud of him. His interaction with
8 Maria is not one of those things. His criminal conduct,
9 his criminal conduct that he was convicted of, and that
10 criminal conduct resulted in the loss of everything that
11 he worked for in his entire life. He was fired from his
12 job, divorced from his wife. She waited until after the
13 verdict. He's penniless. He lost his pension. It's all
14 gone. Couldn't pay anybody for anything. He's got a \$20
15 million lawsuit pending against him brought by the person
16 named Maria. And good luck on collecting. But the
17 character of the defendant that's established at a time
18 when they're not trying to curry favor but they're just
19 doing what they think is best, you know, people don't
20 want to hear that as sentencing. We --

21 THE COURT: You also left out his work at the
22 World Trade Center.

23 MR. RICCO: I did, Judge. In addition to, he
24 was a first responder at the World Trade Center and he
25 was rewarded for that with cancer.

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1 THE COURT: How long was he working there? It
2 was more than just a day.

3 MR. RICCO: He was there many weeks. He was
4 there three or four months, Judge.

5 And so he's got a lot of character. You know,
6 Judge, Carlos Martinez didn't testify in the first trial.
7 Maybe I didn't explain that to you. But he didn't
8 testify because he had a serious conversation with his
9 counsel about his oath, what the oath means, what he's
10 done with his life, and how he needs to go about trying
11 to redeem himself and get his life back on track. He
12 decided not to testify. And I think we made a record
13 about it.

14 Judge, there's a serious Brady violation and
15 that serious Brady violation caused all of that work that
16 was done in the first case to be vacated. As we said in
17 our papers, we would have never known about it because
18 the government effectively kept that information from us
19 through motions in limine and protective orders and the
20 other cases where Jane Doe number four testified. We
21 would have never known about it, Judge, but for the fact
22 that the defense lawyer from that case was in the
23 courtroom previewing the testimony of the very same
24 witnesses that would be testifying in his case. And when
25 that testimony came in, he said that wasn't what happened

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1 in the trial.

2 And so we made a Brady demand. And on the
3 Brady demand we discovered that the government had in
4 fact interviewed Jane Doe number four about the April
5 16th incident. In that interview, that individual who
6 testified as the name Yolanda is what she testified to,
7 provided information that was contrary to the many
8 theories of prosecution in this case. And because of it,
9 the Court granted the motion because it brought into
10 question the whole concept of how force was done and what
11 were the honest reportings of it before people got
12 lawyered up and began thinking about the millions of
13 dollars that they're going to get one day.

14 And so we had a second trial. And in the
15 second trial, Judge, Yolanda got on the witness stand and
16 Judge, she denied every statement that was the basis of
17 the reasons why it was vacated. So at page 540, lines 2
18 to 4, she denied that Otis Delacruz asked her if she
19 would accompany her or go with her down to clean and the
20 woman said no. She said I never said that. She denied
21 that a few days after this event Yolanda asked Maria why
22 she did not want Otis Delacruz or her to go along with
23 her to clean. She denied that that conversation ever
24 happened. She denied that at page 540 lines 11 through
25 17. She denied that she told the agent and the

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1 prosecutors present in this courtroom that Maria told
2 Yolanda that she wanted to go along because she was
3 leaving and she was having relations with the man.

4 THE COURT: In the testimony that my law clerk
5 typed up for me, which I asked her to do so I would have
6 it handy, there is one question that I think Mr. Santiago
7 said --

8 MR. RICCO: Mr. Martinez, your Honor.

9 THE COURT: You know, you're getting me
10 confused with Santiago and Martinez.

11 MR. RICCO: I know.

12 THE COURT: This is Mr. Santiago who's
13 questioning.

14 MR. RICCO: Who's questioning, yes, Judge.

15 THE COURT: Okay. And this is Yolanda I
16 believe.

17 MR. RICCO: Yes.

18 THE COURT: "You also told them that you asked
19 Maria if you could go up there and clean with her and
20 Maria said no. Correct?" Yolanda, "Yes. I asked her if
21 I could go and she said no," which is one of the many
22 things that troubles me about the evidence in this case
23 and the quality of the evidence in this case.

24 MR. RICCO: Yes, it --

25 THE COURT: Of course the jury acquitted on

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1 that particular count.

2 MR. RICCO: They did. And Judge --

3 THE COURT: And it still raises in the overall
4 picture why she even went down there. She was about to
5 be released. This was within a couple of days, a couple
6 of weeks, I don't remember her projected release date.
7 And --

8 MR. RICCO: Well, Judge, what --

9 THE COURT: -- being a question from her own
10 testimony (indiscernible) physically he came -- he just
11 had come back to work from what looked like some complex
12 hernia surgery, how competent he was to engage in violent
13 physical activity. So even though she did go back on
14 what she told the FBI agent, and what she told the FBI
15 agent is in evidence, that's part of what's stipulated
16 that if the agent testified that's what she would say.

17 MR. RICCO: Yes.

18 THE COURT: But she did say that Yolanda said
19 that she said to Maria do you want me to come with you,
20 and I find that -- that's one of the many aspects of
21 Maria's testimony that I find troubling.

22 MR. RICCO: And Judge, to me what makes it
23 difficult for sentencing purposes is that I don't get it,
24 I missed something here, the very statements that
25 provided the basis of us having a retrial in the first

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1 place, the witness takes the stand and denies that she
2 ever made them.

3 THE COURT: But she admits she made a
4 significant one. The question was that she went back on
5 why did she, and I'm only paraphrasing, is essentially
6 why didn't she want you to go she may have said something
7 it's because I have a relationship with him. That's the
8 part that I think she went back on.

9 MR. RICCO: Yes. But Judge, she does --

10 THE COURT: But that was in front of the jury
11 as well because the agent's summary of notes was there.

12 MR. RICCO: Well, yeah. And Judge, to me that
13 is the most important part of it because it really calls
14 into question when you look at the totality of the
15 evidence, you look at the other officers who testified
16 who said we never saw any stress. She was always
17 escorted down. The officers escorted her back and forth
18 and they never saw any distress.

19 THE COURT: They're talking. Don't know what
20 to make of that. But let's say they said that. It's
21 still a question of this going down, stop in February
22 after the strange Facebook --

23 MR. RICCO: Facebook call.

24 THE COURT: -- call in which she was obviously
25 trying to find out personal information about the

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1 defendant which would have corroborated her interest in a
2 relationship with him. And then when he found out about
3 it and she found out about it, it stopped. He stopped
4 calling her. And then there was this last one and she
5 could have presumably have avoided it. And you know,
6 we're dealing here with, I mean you know you're dealing
7 with people who are in jail who are not people of the
8 highest moral character and who all have problems.

9 But this last April 16th, April visit whenever
10 it was --

11 MR. RICCO: April 16th.

12 THE COURT: April 16th. It's one of the --
13 that and the Facebook call are one of the things that I
14 have terrible qualms about. But she was acquitted.

15 MR. RICCO: Yes, Judge. So I really -- I mean
16 we wrote so much about sentencing that I know that the
17 Court has a firm grasp on the points that we want to
18 make.

19 THE COURT: Don't assume anything.

20 MR. RICCO: I generally don't, Judge. But I
21 will say this. What the Court doesn't know about is the
22 many hours that were spent with Carlos Martinez, his very
23 depression that we saw after the second verdict. He
24 looked horrible, lost. You know, he's doing much better.
25 He's hopeful for his future. He knows he has a lot of

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1 building to do. He has to rebuild his life, rebuild his
2 relationship with his daughter who, by the way, is going
3 to college now, his youngest daughter started in college.

4 And Judge, his aunt is present here today.
5 She's seated in the first row. And there was a time when
6 we tried this case the courtroom was packed. All the
7 correction officers were here and different people. And
8 the one lady stayed throughout, she's been to every
9 proceeding, and Carlos, as you recall, Judge, Carlos
10 Martinez's mother died while he was detained in this
11 case. We had made an application to try to get him there
12 and weren't able to. And his mother's sister has
13 remained very supportive of her nephew. She's heard the
14 testimony. She believes in him. She has strong
15 religious beliefs, and the defendant does too. And he's
16 never lost that. I could go on but I'm not.

17 THE COURT: Well notwithstanding the fact that
18 I am concerned about whether false testimony was given by
19 the complainant and the jury found that, I still have the
20 guilty verdict which I can't set aside.

21 MR. RICCO: That's true.

22 THE COURT: And it's a forcible rape by a
23 prison guard and --

24 MR. RICCO: So Judge, I have to --

25 THE COURT: I could say, and this is not a

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1 defense to him, but one of the things that's been
2 bothering me about this is I believe, and again I want to
3 repeat, that this is not a defense at all to him, that
4 the MDC has been at an enabler of these rapes. I had one
5 case involving Clark Mullins who you didn't charge. When
6 I say you, Ms. Geddes, I don't mean you personally, but
7 the U.S. Attorney's Office didn't charge him with
8 forcible rape. And when I read the testimony, I mean I
9 believe it was a guilty plea, but when I read it, I
10 upwardly departed I think it was to eight and a half
11 years because it seemed to me I couldn't understand why
12 this wasn't charged as a violent rape.

13 Judge Ross's case involved five separate -- and
14 I know you divide it up and you want to make it look a
15 little less terrible in terms of comparing sentences, but
16 it involved one officer and five I believe women who were
17 subject to one form or another of sexual assaults. We'll
18 just use the word loosely. Two of them may have been
19 violent rapes. And now I have this case. So that's
20 seven. And when I say the MDC was an enabler, it wasn't
21 that there were that many incidents, but they send women
22 to clean the office of male officers. The officers are
23 not under close circuit surveillance. But the setup is,
24 as you went through all the pictures, was that the
25 officer inside the office can see what was going on

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1 outside and see if anybody was coming.

2 And the final step in this enabling processes
3 is when a complaint is made, whether the testimony was
4 not entirely clear whether it was temporary or more than
5 that, the complainant is put in the SHU which is solitary
6 confinement 23 hours a day. And that's how this system
7 works or has worked. And I don't know what's going on.
8 I mean there was some indication in a note that Mr. Ricco
9 sent me last night that there's some separate Department
10 of Justice investigation that's going on. This is just
11 inexcusable. They are enablers of what's going on.

12 And then I have the warden who has the nerve to
13 write me a sentencing letter in this case when I suspect
14 that the warden who was there when these things were
15 going on was probably permitted to retire without
16 consequence. And it's just shocking, shocking degree to
17 which the Bureau of Prisons at the MDC enabled this to
18 happen. No one had the foresight to think we shouldn't
19 send women, and in effect it's almost a degree of sexism
20 which is the least of the crimes to send a woman in to
21 clean as opposed to men. So I just --

22 MR. RICCO: Judge, what I wanted to add, and it
23 is --

24 THE COURT: And I want to make it clear this is
25 not a defense to any guard who committed a rape. It's

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1 not a defense. But these crimes were enabled by the
2 people who ran the Bureau of Prisons. And that's one of
3 the things that's really bothered me through these cases
4 that I've had.

5 Go ahead. I'm sorry if I interrupted you.

6 MR. RICCO: Yes. So Judge, along those lines,
7 and these arguments that I'm making are really in
8 mitigation of sentencing, not of guilt.

9 THE COURT: No, no, no. I know.

10 MR. RICCO: And I would say this, Judge, the
11 case that --

12 THE COURT: Well I wanted to get to that.
13 That's what I wanted to get to. I wanted to get to the
14 issue of sentencing because these are serious crimes in
15 an institution like that, assuming it was committed, and
16 I have to accept the jury's verdict despite my own qualms
17 about her credibility. It's ultimately a credibility
18 determination. I couldn't set aside the verdict even if
19 you had timely moved on that count.

20 MR. RICCO: Judge, the case that
21 (indiscernible) --

22 THE CLERK: The microphone.

23 MR. RICCO: Sorry. The case that you upwardly
24 departed about that you mentioned, I'm familiar with
25 that.

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1 THE COURT: That was Clark Mullins.

2 MR. RICCO: Yes, Judge. And I'm familiar with
3 that case and your Honor's ruling with respect to that
4 case.

5 THE COURT: You were the original lawyer and
6 then he was stupid enough to get somebody else.

7 MR. RICCO: Well, I agree with that. But I do
8 know, Judge, that having read your concerns, I get it. I
9 mean it was. I mean it was a prosecutorial decision was
10 made to allow a person to plead to a count just involving
11 a ward thing. But --

12 THE COURT: Maybe the government had their own
13 qualms about the credibility of the witness. I don't
14 know.

15 MR. RICCO: They may have. I don't know,
16 Judge.

17 THE COURT: Occasionally I think about it
18 particularly since I've immersed myself in this
19 particular case.

20 MR. RICCO: And then Judge, the other case was
21 a case that involved many of these same, several of these
22 same witnesses involving the case in front of Judge
23 Matsumoto. And that defendant's conduct dated back to
24 2013. And tried by the same prosecutorial team. His
25 guidelines were life also. He was convicted of forcible

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1 rape, multi-counts of it. There were no acquittals in
2 that case.

3 THE COURT: I know but --

4 MR. RICCO: I'm just saying this, Judge. The
5 sentence that was imposed --

6 THE COURT: Ms. Geddes has broken it down so
7 that you can't say they're Rule 5 forcible rapes.

8 MR. RICCO: Well there were no -- there was
9 some differences but he was convicted --

10 THE COURT: Yes, I know. But there were five
11 separate instances of improper, we'll just use that word,
12 neutral word, sexual contact.

13 MR. RICCO: And even one --

14 THE COURT: Including one at least, I don't
15 remember --

16 MR. RICCO: Right. And then there was one
17 count --

18 THE COURT: -- whether it was one or two of
19 forcible rape.

20 MR. RICCO: There was one count standing alone
21 of an attempted. But the fact of the matter, Judge, is
22 that the kind of time that the government is requesting
23 in here is just disproportionate and disparate given
24 sentences that are imposed for the same kind of facility
25 by people who have engaged in far more egregious conduct

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1 with far more women. I'm sure that their investigation
2 is what it is involving this woman who testified here.

3 We had asked that the Court consider a sentence
4 of 60 months. And why? Five years in prison is a long
5 time. It's not a light sentence. I represented a
6 defendant here who was charged with having sex with a
7 ward and one count and she received a sentence of a year
8 and a day. Different circumstance obviously as each
9 individual case is different. And I'm a great believer
10 that defendants are entitled to an individual assessment
11 of who they are in their case.

12 I mention it because of fairness in sentencing.
13 We don't lose fairness at the time of sentence. It's
14 probably the time where fairness needs to be at its
15 highest level because of the loss of liberty and
16 everything that goes along with it.

17 The last five years for Carlos Martinez have
18 been very harsh. He's been through COVID. And many
19 judges of this court, your Honor included, have granted
20 relief to defendants at sentencing because of it. Carlos
21 Martinez endured that also in addition to the
22 circumstances of his detainment resulting from the type
23 of charge and the fact that he's a law enforcement
24 officer.

25 It's probably been the most difficult time -- I

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1 know that it's been the most difficult time at least in
2 my career that defendants have had to endure being
3 incarcerated. And it's a factor that I would ask the
4 Court to consider.

5 I'm familiar with your Honor's sentence, Mr.
6 Mullins. And I guess I arrived at the suggestion based
7 upon the involvement of COVID and the two years that Mr.
8 Martinez endured as a result of that was not present. I
9 don't know if your Honor would have considered that as an
10 issue in the Mullins case or not or to what extent, or to
11 what extent it should be considered here. But it is a
12 factor. It is a real-time factor that affected the
13 defendant. It was a part of his punishment.

14 But I can tell the Court that my belief is that
15 the defendant before the Court, if the word atone means
16 anything, that he's gone through that process that
17 everyone would expect all of the defendants to do, and
18 that has happened for him. That I'm confident of because
19 we've had to endure such a long time with this case. Not
20 because of the government or anything. Two years of it
21 has been COVID. But if there's a such thing as
22 unintended consequences, the unintended consequences of
23 that is that it provided a time period for reflection,
24 isolation, and for Mr. Martinez to regroup.

25 And I don't have anything else to add, Judge.

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1 I don't. It's all been said. It's all in the papers.

2 THE COURT: One of the things that I said when
3 I departed upwardly in Clark Mullins in terms of the
4 factors that go into the sentencing guidelines, it's not
5 a question of deterring him in terms of deterrence being
6 one of those factors. I don't think anybody thinks that
7 he's going to go out and become a serial rapist. This
8 happened because of a particular circumstance that lent
9 itself to it.

10 But what message do I send? And I said this to
11 guards at the MDC, I've already tried to send a message
12 to the MDC to the extent they never pay any attention to
13 what judges think. What message do I send to people who
14 are at the MDC. I mean that to me is I think --

15 MR. RICCO: Judge, I think --

16 THE COURT: -- this is a serious crime in terms
17 of the 3553(a) factors. I don't think there's any --
18 there's no doubt in my mind that he is not going to go
19 out and rape anyone if he's released. He's not a violent
20 criminal. He's led an otherwise admirable life in terms
21 of the factors that we went through near the outset of
22 your presentation. But you know, to what extent do I
23 impose a sentence that would be imposed if it was simply
24 purely consensual and it was simply a ward situation. I
25 mean that's the thing that I'm somewhat torn by, that and

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1 the fact that I'm concerned about her veracity as a
2 witness.

3 MR. RICCO: Judge, I still take the position
4 that five years in prison is a powerful --

5 THE COURT: I don't quarrel with that. There
6 are times when I have conversations with my law clerks,
7 maybe not with this group because of COVID we haven't
8 spent as much time with each other. But I'd say a year
9 doesn't sound like a lot unless you have to serve it.
10 And five years is an awful lot. I'm aware of that. But
11 you know, there are other considerations I have to take
12 into account.

13 All right. Shall we hear from the government
14 and then your client? Or do you want me to hear from
15 your client and then the government?

16 MR. RICCO: Let's hear from the government and
17 then Mr. Martinez can respond to what they have to say
18 about him.

19 THE COURT: I need to take my mask off to take
20 a drink of water.

21 MS. SHIHATA: Should I proceed or --

22 THE COURT: I think I can drink water and
23 listen to you at the same time.

24 MS. SHIHATA: I'm sure you can. I'm sure you
25 can. Thank you, your Honor.

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1 I would just like to start by indicating that
2 the government does not agree that the only reasonable
3 conclusion that the Court can draw from the jury's
4 verdict is that they did not credit Maria's testimony. I
5 think an equally reasonable conclusion and frankly one
6 that is supported by the jury's verdict is laid out on
7 page 5 of our October 28, 2021 letter.

8 And I want to take us back for a moment to the
9 evidence and the testimony in this case regarding the
10 first incident where the jury found the defendant guilty
11 of aggravated sexual abuse.

12 THE COURT: I'm not questioning the verdict.

13 MS. SHIHATA: I understand, but it informs the
14 rest of what I'm going to say. So if the Court would
15 indulge me, I'd appreciate it.

16 With respect to the factual scenario of that
17 incident, the evidence was that the defendant had called
18 Maria down to clean the second floor area and that during
19 the course of the interaction in the lieutenant's office,
20 he pinned her down on the desk, pulled her pants down,
21 and forcibly raped her from behind with such an amount of
22 physical force that ultimately resulted in her bleeding.

23 Now I think that's important --

24 THE COURT: She testified -- I don't want to
25 get into all of this stuff.

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1 MS. SHIHATA: She did testify to that, but
2 there was --

3 THE COURT: She testified that the bleeding was
4 due to the fact that she had not had sexual intercourse
5 in some time.

6 MS. SHIHATA: She may believe that --

7 THE COURT: Now I know Ms. Geddes at some
8 point in the transcript --

9 MS. SHIHATA: -- but I don't think
10 scientifically that that's how it works.

11 THE COURT: -- said that that wasn't so but I
12 believe it's on page 79 that --

13 MS. SHIHATA: I believe that was in the first
14 trial if I'm remembering. I don't think --

15 THE COURT: No, I think it was --

16 MS. SHIHATA: Anyway --

17 THE COURT: Unless I have the wrong transcript.

18 MS. SHIHATA: -- be that as it may, the jury
19 could certainly infer and conclude, as it did I
20 believe --

21 THE COURT: They found it. I didn't say they
22 didn't --

23 MS. SHIHATA: Okay. But the reason it's
24 important, Judge --

25 THE COURT: -- credit her testimony on that

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1 count. They did.

2 MS. SHIHATA: Understood. But the reason it's
3 important, Judge, is because the fear element can also be
4 a fear of the use of that amount of physical force. So
5 for example, if she is fearful that he is going to use
6 that amount to get her to submit, that's a fear under the
7 law that even though he used some lesser amount of
8 physical force, and that qualifies and is consistent with
9 the jury's verdict. Your Honor may disagree with me. It
10 appears that you do. But I want to make the record clear
11 that there is a conclusion that can be drawn from the
12 evidence that entirely credits Maria's testimony. And
13 that actually fits the verdict that was rendered by the
14 jury in this case.

15 THE COURT: Well that's not what the jury was
16 charged and that's not the way --

17 MS. SHIHATA: Your Honor, they were charged.
18 They were --

19 THE COURT: It's not the way you charged it and
20 it's not --

21 MS. SHIHATA: I disagree, but I'll move on.

22 THE COURT: It's not clear to me that your
23 construction of the statute is correct. She did not say
24 this. You're putting those words in her mouth.

25 MS. SHIHATA: A jury is permitted to draw

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1 inferences from the evidence though, Judge.

2 THE COURT: Could you tell me that she said
3 what you just said?

4 MS. SHIHATA: Sorry, I didn't hear you. I
5 apologize.

6 THE COURT: That she gave the reason for
7 acquiescing because she was afraid that the next time he
8 was going to use force.

9 MS. SHIHATA: Judge, it is not --

10 THE COURT: Could you answer that?

11 MS. SHIHATA: I don't believe she --

12 THE COURT: That only requires a yes or no.

13 MS. SHIHATA: No, she did not explicitly say
14 that.

15 THE COURT: She did not say that, no.

16 MS. SHIHATA: But it is also clearly the law,
17 Judge, that a jury can draw inferences from the evidence
18 and that is a valid inference to draw. You may not have
19 agreed and you may not have drawn that inference but the
20 jury certainly could.

21 THE COURT: I might have. The question is --
22 I'm not saying I agree or disagree. I just think that
23 the question is what caused her to consent to the extent
24 there was consent if she consented as opposed to each
25 time he approached her.

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1 MS. SHIHATA: There's a difference --

2 THE COURT: As you described it in your letter,
3 there was no conversation. He just violently assaulted
4 her each time.

5 MS. SHIHATA: Your Honor, knowing the
6 consequences --

7 THE COURT: And in each case you describe it in
8 your opening statement as rape.

9 MS. SHIHATA: Rape is not just physical force,
10 your Honor.

11 THE COURT: Now it's one thing if she said that
12 the reason that I -- she didn't say she acquiesced, but
13 the reason I went along, the reason I didn't fight was
14 because I was afraid. The fact is that she actually did
15 fight on one occasion.

16 MS. SHIHATA: She did. And he then threatened
17 her with five years in prison. He said do you know what
18 you could get for that? Which is entirely consistent
19 with the government's theory, Judge.

20 THE COURT: What you could get for assaulting a
21 federal officer, a prison guard or a prison officer.

22 MS. SHIHATA: Yes, but it has to be looked at
23 in the context of what was going on, Judge. And by the
24 way, she did testify that she was scared. And there is
25 case law I believe from the Fifth or the Eighth

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1 Circuit --

2 THE COURT: I know she was scared. Why did she
3 go down there on the last time?

4 MS. SHIHATA: Because he was -- she is an
5 inmate, she doesn't get to decide that she's not going to
6 go down when a lieutenant, who's the highest ranking
7 person in jail at the time says --

8 THE COURT: She was asked by another prisoner
9 whether she wanted to be accompanied. And it was also
10 quite near the end --

11 MS. SHIHATA: Your Honor, Otis Delacruz did
12 testify at the trial --

13 THE COURT: It was also --

14 MS. SHIHATA: -- and did not recall that.

15 THE COURT: It was also right near the end of
16 her prison sentence. Days away.

17 MS. SHIHATA: Exactly, Judge. And she wanted
18 to get out of the MDC which was a horrible place for her
19 where these things occurred. Judge, I'm not trying to
20 convince you at this point but I think the record is --

21 THE COURT: The record is that the jury found
22 what they found and they found him not guilty.

23 MS. SHIHATA: And they found him guilty of
24 sexual abuse using fear.

25 THE COURT: And they did, they found him --

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1 MS. SHIHATA: Of not just aggravated sexual
2 abuse.

3 THE COURT: I don't --

4 MS. SHIHATA: You may disagree with them but
5 that is in fact what the verdict was. And that's all I'm
6 saying is that there is evidence from which the jury
7 could reach that verdict. I understand that you
8 disagree. I am simply making a record that there was in
9 fact evidence about it.

10 THE COURT: Okay. There was. Let's assume
11 you're right --

12 MS. SHIHATA: But now I will move on.

13 THE COURT: I'm not sure what that adds to the
14 discussion we're having.

15 MS. SHIHATA: Okay. I think what it adds,
16 Judge --

17 THE COURT: Because the worst part of what he
18 did was physically assaulted her each time as you
19 describe it in your letter and as you characterized it in
20 your opening statement.

21 MS. SHIHATA: I agree, Judge, that is the worst
22 part and that is the most serious.

23 THE COURT: I don't think that there was any
24 adequate response in the summation to the call, I keep
25 calling it a call, to the Facebook investigation.

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1 MS. SHIHATA: There was testimony. And I'm not
2 trying to retry this case, Judge, at the sentencing but
3 there was testimony --

4 THE COURT: No, some of the stuff is relevant.

5 MS. SHIHATA: Understood. And I would like to
6 remind your Honor, and I'm sure it sounds like you read
7 the transcript and are fully familiar with the records
8 are not trying to suggest otherwise, but there was
9 testimony about the reasons that she made that call in an
10 effort to make the abuse stop. And she thought that he
11 would be listening to it and that this would help.

12 THE COURT: Then she knew that if she -- you
13 know, you're going around in a somewhat conflicting
14 argument.

15 MS. SHIHATA: Judge, the one thing --

16 THE COURT: She was afraid to make a complaint
17 but in effect she was doing something that would in
18 effect be the equivalent in terms of her tormentor
19 finding out what she was doing.

20 MS. SHIHATA: She believed he was listening to
21 her calls. The point was not so that --

22 THE COURT: And why was the request made about
23 whether he was married or not and why were questions
24 asked about the women who were in the pictures?

25 MS. SHIHATA: Because she wanted him to be

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1 concerned that she had made this call and concerned
2 enough that he would stop. Your Honor, the one thing
3 that's clear from the evidence is that --

4 THE COURT: Well, the call could have
5 indicated --

6 MS. SHIHATA: -- she did not know --

7 THE COURT: The call could have indicated to
8 this person, we'll call it a call, whatever, I don't know
9 from Facebook, but it could have, if that was her
10 concern, she could have said I'm being sexually assaulted
11 by a lieutenant.

12 MS. SHIHATA: Your Honor, she believed because
13 of what he told her --

14 THE COURT: That would put a stop to it. In
15 fact, this call put a stop to it.

16 MS. SHIHATA: She believed that because of what
17 he told her that if she reported that explicitly she
18 would go to the SHU as punishment. Okay? Now were there
19 better ways for her to report this? Absolutely.

20 THE COURT: Well she didn't go to the SHU and
21 it had the exact same effect.

22 MS. SHIHATA: She didn't go to the SHU because
23 she didn't report it, Judge. And it didn't have the
24 exact same effect. He sexually abused her one more time.

25 THE COURT: She knew that he would find out

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1 about the call and he did.

2 MS. SHIHATA: Yes, he found out about the call
3 because Tomas Rodriguez, the SIS officer, told him about
4 it which was not actually the protocol that he should
5 have followed.

6 THE COURT: And it may be but you just told me
7 it would have the effect of putting, you know, she wanted
8 to put a stop to it.

9 MS. SHIHATA: I told you that that's what she
10 believed.

11 THE COURT: All right. That's what she
12 believed.

13 MS. SHIHATA: I think we should also
14 acknowledge, your Honor, she was in her twenties at the
15 time. Would I have gone about things that way? No, of
16 course not. But she's in the situation she's in.

17 THE COURT: Well, she had a --

18 MS. SHIHATA: And she was doing the best she
19 could to try to make this stop.

20 Now the point, Judge, my only point in raising
21 these points is that inferences can be drawn in favor of
22 the jury's verdict and not against it and that the
23 evidence does not -- the only conclusion that one could
24 draw, which is what your Honor suggested, is that she was
25 not telling the truth.

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1 THE COURT: The jury was not charged in a way
2 that would support that verdict. But it's neither here
3 nor there because in my view she never testified that the
4 reason that she made no effort to -- this is a case of
5 forcible rape under her testimony. That's the bottom
6 line. It wasn't a case where she said I was caused to do
7 this because I was in fear of threats or force and you
8 acknowledge that she never said that that was what
9 motivated her. What motivated her throughout this was
10 that essentially forcing her. And the jury didn't
11 believe that.

12 MS. SHIHATA: Your Honor, I disagree. I don't
13 acknowledge that. What I acknowledge was that there can
14 be more than one causative element and that it was both
15 physical force and threats and fear.

16 THE COURT: The one that you argued was the one
17 that was consistent with what I was saying. And when I
18 say you, I'm separating you from Ms. Geddes who gave a
19 somewhat more subtle summation. Maybe nuanced is a
20 better word. I don't know.

21 MS. SHIHATA: Anyway at this point, your Honor,
22 let me move on towards the --

23 THE COURT: In fact, the person who wrote the
24 pre-sentence report said she was raped all the time.

25 MS. SHIHATA: I would just like to note, Judge,

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1 forcible rape does not require physical force. A person
2 can be forced through the use of fear and threats as
3 well.

4 THE COURT: Okay.

5 MS. SHIHATA: And any rate, I will move on now
6 to the Section 3553(a) factors for the Court.

7 THE COURT: But I hate to get involved with
8 these legal debates. The deprivation of rights charge,
9 and I think I may have given what you asked for, said
10 they had to find him guilty of aggravated sexual abuse in
11 order to find him guilty of deprivation of rights.

12 MS. SHIHATA: And in turn guilty --

13 THE COURT: That was right in there. That's
14 why you create problems by making up four separate
15 counts, four separate crimes for what is essentially one
16 for each discrete act. But the specific charge on the
17 deprivation of rights was they had to find aggravated
18 sexual abuse and they didn't find it except on one count.

19 MS. SHIHATA: I'm not disagreeing with your
20 Honor.

21 THE COURT: Okay.

22 MS. SHIHATA: Okay. So moving on to the
23 section 3553(a) factors.

24 THE COURT: And by the way, I got your
25 second -- you sent me a second victim impact statement.

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1 MS. SHIHATA: Yes, your Honor. Thank you.

2 THE COURT: I assume that Mr. Ricco got it.

3 MS. SHIHATA: Yeah, it was filed on ECF, Judge.

4 MR. RICCO: We did.

5 THE COURT: And let me just say something about
6 that. It sounded familiar to me. And the reason it
7 sounded familiar to me was because of the discussion we
8 may have had at the end of what she told Immigration and
9 Naturalization in support of her claim for I guess it's a
10 T visa, that she had been sexually trafficked. And you
11 can read the testimony yourself, it just sounded awfully
12 familiar to me in terms of statements that she was
13 making. That's also neither here nor there. And I don't
14 purport to be an expert on the effect that the horrible
15 claims that she made to the INS or to Immigration somehow
16 would have prevented her from the sufferings that she
17 described in the letter. All I'm suggesting is that when
18 I read the letter I said why does this sound familiar?
19 And I went back and I read the argument about the
20 stipulation. But go ahead.

21 MS. SHIHATA: With respect to the Section
22 3553(a) factors, I think as the Court has recognized
23 these are serious crimes. I would respect what the Court
24 said regarding the MDC being an enabler. I think on that
25 you and I wholeheartedly agree.

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1 THE COURT: Well you and the Bureau of Prisons,
2 I think one of you may have even said this in the
3 transcript somewhere, are part of the Department of
4 Justice and the one good thing about this is unlike New
5 York where there is no single agency that oversees the
6 enforcement of the criminal laws where people can blame
7 each other, is that the Department of Justice has
8 oversight over you and the Bureau of Prisons. You're not
9 separate agencies.

10 And the Bureau of Prisons in my view, not only
11 here but in many other respects, operates in a manner
12 that leaves a lot to be desired. In fact, somebody
13 should ask for the ombudsman of the Department of Justice
14 to look into how the MDC is being run here including the
15 sexist business of sending women to be cleaners as
16 opposed to man where women make actually a relatively
17 small percentage of the population of the MDC as I
18 understand it.

19 MS. SHIHATA: Understood, Judge. And like I
20 said, I don't disagree with the Court what you said about
21 the MDC.

22 THE COURT: Well, you should try and do
23 something about it.

24 MS. SHIHATA: I actually have, Judge. I'm
25 happy to talk to you about that offline.

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1 THE COURT: Not you personally. The U.S.
2 Attorney should do it.

3 MS. SHIHATA: Understood.

4 THE COURT: Another good thing about the
5 Department of Justice that people don't always realize is
6 that the U.S. Attorney is an appointee of the president
7 and therefore has a certain degree of independence
8 notwithstanding the fact that there is an attorney
9 general. Only the president can fire a U.S. Attorney and
10 that gives the U.S. Attorney one significant advantage.
11 And the other significant advantage that it gives the
12 U.S. Attorney is that he stands on the same footing as
13 presidential appointees in the Department of Justice
14 including the head of the Bureau of Prisons. And if
15 anything is going to come of it, it should be in a letter
16 from U.S. Attorney. But we're going off on a tangent and
17 I don't want to go off on it any further.

18 MS. SHIHATA: So moving back to the 3553(a)
19 factors, Judge, the additional point I wanted to make on
20 that issue is that the testimony and the evidence at the
21 trial certainly established that the defendant used the
22 tools that the MDC provided him with. And he does have
23 agency in this scenario. He decided to call Maria to
24 clean for him. He did that is a high ranking official at
25 the jail. He did that at times when he knew the second

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1 floor would be empty. He used the tools he had access to
2 including the security camera systems.

3 THE COURT: Let me ask you something. I don't
4 mean to interrupt but I am interrupting. There was some
5 ambiguity in the record. I don't know if it ever got
6 straightened out in terms of the jury knowing about it.
7 He testified, or there was testimony that she had a job,
8 she had what one would describe as a full-time job five
9 days a week working in the medical unit. And this
10 weekend work, I don't know what the truth is, but there
11 was an ambiguity in the record as to whether this was
12 quote voluntary or she had to work on weekends in
13 addition to the full-time, what I would characterize as
14 the full-time job that she had Monday through Friday.

15 MS. SHIHATA: She didn't work Monday through
16 Friday, Judge. Her job was actually to work at those
17 times and --

18 THE COURT: I'm sorry I don't know what you
19 mean those times. I thought the testimony was that she
20 worked in the medical unit and that she worked in the
21 medical unit unless she was off, she worked in the
22 medical unit five days a week and she worked for him on
23 weekends.

24 MS. SHIHATA: There was also testimony, Judge,
25 from both MDC legal counsel I believe, Nicole McFarland,

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1 as well as from Otis Delacruz, the witness the defendant
2 called, that when Maria was called on the weekends that
3 she was required to go and that she couldn't just say no.
4 And in fact --

5 THE COURT: And maybe you could send me that
6 testimony. I don't remember it. I know --

7 MS. SHIHATA: I can cite it for you now, Judge.

8 THE COURT: My recollection was that this came
9 up in terms of the jury note, certain pages were sent in
10 to the jury from the transcript as being responsive to
11 their note, and I thought that there was an ambiguity in
12 the pages of the transcript that were sent in to the
13 jury. Now I could be wrong. This is a long transcript
14 and I spent a lot of time reading it.

15 MS. SHIHATA: Your Honor, I recall that we had
16 extensive argument about it. I recall that. And I --

17 THE COURT: That was a part that dealt with --
18 it was a jury note.

19 MS. SHIHATA: Yes, your Honor. We had --

20 THE COURT: And it dealt with how a jury note
21 would be answered. And ultimately an agreement was
22 reached that here are the pages in the record that are
23 responsive to your note.

24 MS. SHIHATA: Yes.

25 THE COURT: And I looked at those pages and it

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1 didn't seem to me that they provided a clear answer.

2 MS. SHIHATA: Included in those pages, I
3 believe your Honor, was testimony from Otis Delacruz, who
4 was called by the defendant. And she indicated quote,
5 "You don't do what you're supposed to do they will write
6 you up." That's at page 671 of the transcript.

7 THE COURT: I know, but if you don't do what
8 you're supposed to do they'll write you up, depends on
9 what you're supposed to do.

10 MS. SHIHATA: And it was in the context, Judge,
11 of Maria going down, being told to go down to clean.

12 THE COURT: What page in the transcript?

13 MS. SHIHATA: 671. And she also states she,
14 quote, "She had to clean it, that's what she had to
15 clean." She also said that Maria, and I'm only focusing
16 on this because you mentioned Otis Delacruz, but Otis
17 testified that Maria would ask her in fact on the
18 weekends whether she could go down to clean with her and
19 Otis told her no, I have visits on the weekend, I'm not
20 going.

21 THE COURT: I don't know that it was every
22 weekend but I do remember that.

23 MS. SHIHATA: And the reason --

24 THE COURT: But there's also testimony that on
25 the last time somebody said do you want me to go and she

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1 said no.

2 MS. SHIHATA: Yes. And there was also an
3 explanation from Yolanda that that was in the context of
4 Maria was leaving the MDC shortly and she specifically
5 warned Yolanda don't go to the second floor. I think a
6 reasonable inference from that testimony, from Yolanda's
7 testimony, is that Maria was warning Yolanda, because she
8 didn't want the same thing to start happening to her.
9 Yolanda was also a young attractive Spanish female at the
10 MDC.

11 Now these are certainly inferences that can be
12 drawn from the evidence and --

13 THE COURT: Could you just wait one second?
14 Sure. I honestly don't see on page 671 where that deals
15 with the question that I asked.

16 MS. SHIHATA: I don't have the transcript in
17 front of me. I had that note.

18 THE COURT: I tried and I may have missed it
19 but --

20 MS. SHIHATA: No, I understand, but I don't
21 want to --

22 THE COURT: When it went into the jury, they
23 said this were the pages that are responsive to your
24 note. And I said why don't we attach the pages and
25 somebody said well they already have the transcript. But

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1 the pages were specifically -- the record reflects that
2 the pages that were sent in to the jury. All I'm saying
3 is is that it was unclear to me from the pages that went
4 in as to whether or not this was voluntary.

5 MS. SHIHATA: So we submit that it was not
6 and --

7 THE COURT: I know, but you can only submit
8 what's in the record.

9 MS. SHIHATA: Well, if I had known, Judge, that
10 this was what your Honor was going to ask me to do to re-
11 prove the entire case, perhaps I could have but --

12 THE COURT: Look, sentencing people is very
13 serious business --

14 MS. SHIHATA: Of course.

15 THE COURT: -- which I take very seriously.
16 And the amount of time that it took me to read the
17 transcript, I could have tried a short case. So you
18 know, if I read the transcript, you should read the
19 transcript.

20 MS. SHIHATA: I have, Judge, but I have --
21 anyway, I'll move on, Judge.

22 The point is this is a serious crime and of
23 course sentencing someone is probably the most difficult
24 task that any judge has to do in their job. The
25 government certainly understands that. And the

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1 government also understands the mitigating factors that
2 Mr. Ricco so ably mentioned. And of course the Court
3 should also consider the other good works that Mr.
4 Martinez has done in his life.

5 But we can also not forget that this is in fact
6 a serious crime, that there is in fact a victim of this
7 crime involved here. And this has also had a hugely
8 detrimental effect on her life. It is not easy for
9 someone to get up on a witness stand over the course of
10 multiple days to talk about the worst experience of their
11 lives.

12 THE COURT: I'm not sure that it was multiple
13 days.

14 MS. SHIHATA: It was, Judge. It was two
15 days --

16 THE COURT: Okay, two days.

17 MS. SHIHATA: -- in the first trial and two
18 days in the second trial. I think you can give me that
19 that it's multiple days.

20 THE COURT: I'm sorry. I was concentrating on
21 the second trial.

22 MS. SHIHATA: Okay. Even on the second trial I
23 believe it was more than one day.

24 THE COURT: And her testimony was really not
25 that long. It was a thin transcript the first time.

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1 Look, I don't want to get involved in how -- I think you
2 should try --

3 MS. SHIHATA: Judge, my only point, and you may
4 disagree with it --

5 THE COURT: I think you should try --

6 MS. SHIHATA: -- is that it is not easy for
7 someone to testify --

8 THE COURT: I think you should try to not get
9 carried away.

10 MS. SHIHATA: I don't think I'm getting carried
11 away when I say --

12 THE COURT: She was not a stranger to the
13 criminal justice system.

14 MS. SHIHATA: Your Honor, even people convicted
15 of --

16 THE COURT: I don't remember all of the things
17 now that Mr. Ricco alluded to.

18 MS. SHIHATA: Your Honor --

19 THE COURT: But she was not a stranger to the
20 criminal justice system.

21 MS. SHIHATA: And no one claimed that she was.
22 But even people who aren't strangers to the criminal
23 justice system deserve not to be sexually abused when
24 they're serving their sentence.

25 THE COURT: I agree with that completely.

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1 MS. SHIHATA: Okay. Great. I'm glad we
2 reached agreement on that.

3 THE COURT: And in fact, as I said earlier, who
4 is going to be in the MDC to begin with?

5 MS. SHIHATA: Which is why it makes it so
6 hard --

7 THE COURT: People who have been charged with
8 crimes. Not all of them have long criminal records but
9 they are people who have been charged with crimes. I
10 agree with that. And in part, that's what makes this a
11 serious crime because they're subject to the control of
12 guards and the overall prison personnel.

13 MS. SHIHATA: In that regard, Judge, I also
14 would like to point out that, as your Honor knows and I'm
15 sure has read again more recently, the defendant chose to
16 testify in the second trial and that's of course his
17 right. But also the jury's verdict make clear that he
18 lied during that testimony. He didn't just say this was
19 consensual, which in the government's view is not what
20 happened, and also in the jury's view, but also he went a
21 step further. He completely negated the power
22 differential that certainly exists in a prison between a
23 lieutenant and a sentenced prisoner. He couldn't even --
24 he suggested incredibly, I'd argue, that Maria was the
25 aggressor even though she was not the one controlling the

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1 cameras. She was not the one that knew the schedules at
2 the place. Your Honor, it is certainly a relevant factor
3 that he did not tell the truth at the trial. It is
4 certainly a relative factor that he was a lieutenant and
5 she was a sentenced prisoner. It is certainly a relevant
6 factor that whether the Court believes it or not, this
7 has had an effect on her life.

8 THE COURT: It's not a question of what I
9 believe. I don't know what effect it's had. I'm just
10 pointing out that when you sent me a belated, you know,
11 in the middle of the night a portion of her victim impact
12 statement that you haven't sent me before, I said this
13 sounds familiar to me. And the familiarity was that I
14 went back to the discussion we had about what happened
15 before the immigration and how she came to have a T visa
16 and she portrayed herself as having been a victim of
17 terrible sexual abuse.

18 MS. SHIHATA: That wasn't actually her
19 testimony, Judge. But I'm not going to belabor --

20 THE COURT: Look, the way this came about was
21 because I think in the ordinary course there would be
22 reason to be concerned about a witness who would not
23 normally be getting a T visa. And one of the issues I
24 suppose that one would have been concerned about was
25 whether it had anything to do with her testimony.

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1 MS. SHIHATA: It did not, Judge.

2 THE COURT: I'm telling you the background of
3 how it came up. And it came up. And you persuaded Mr.
4 Ricco not to press the issue precisely because of -- he's
5 the one who was reciting what she said. That was the
6 irony. But you didn't dispute it. I can get the page
7 for you if you want.

8 MS. SHIHATA: That's fine, Judge. One moment,
9 your Honor. I'll conclude, your Honor, by just asking
10 the Court given the serious nature of the crime, given
11 the power differential between a lieutenant and a
12 sentenced prisoner, and also given, as the Court in our
13 view correctly determined that the need for deterrence in
14 this case --

15 THE COURT: I'm sorry, I didn't hear what you
16 said.

17 MS. SHIHATA: The need for deterrence of others
18 to prevent others from engaging in precisely the same
19 type of conduct which is an issue, and a serious one,
20 that the Court should consider in fashioning a sentence.

21 And with that, your Honor, we would rely on our
22 papers and submit that a sentence of time served, which
23 is essentially what the defense is asking for, is not
24 sufficient to meet the 3553(a) factors.

25 THE COURT: What if I don't give a sentence of

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1 time served? What is?

2 MS. SHIHATA: Your Honor, in our papers we have
3 indicated that we are seeking a sentence of 20 years
4 imprisonment. I think that's in line with the sentence
5 that Judge Matsumoto gave in the *Perez* case. On the
6 aggravated sexual abuse counts she --

7 THE COURT: No, but that case is different.
8 That case involved five different inmates who were
9 subject to inappropriate --

10 MS. SHIHATA: Yes, but even on a single count
11 she gave --

12 THE COURT: I know, but you can't, even on a
13 single count, you don't, when you sentence somebody, you
14 don't look at it that way.

15 All right. Do you wish to speak? Why don't
16 you give me a minute. I have to step out for a minute.

17 MR. RICCO: I do too, Judge, if you don't mind.
18 (Off the record)

19 THE COURT: Okay. Everybody here? Court
20 reporter ready? Okay. Mr. Martinez, do you wish to
21 speak?

22 THE DEFENDANT: Judge Korman, I want to thank
23 you for allowing me to speak to you and address the
24 Court.

25 I'd like to start by saying that I'm not

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1 perfect. No one is. I've done many good things in my
2 life but I have made a mistake of violating the trust
3 that I earned while working as a lieutenant for a moment
4 of pleasure.

5 Maria and I had a consensual affair, a secret
6 relationship that we both agreed on, and that's all it
7 was. I did not forcibly rape or forcibly sexually
8 assault Maria. I never forced, demanded, threatened.
9 That is not who I am or how I was raised. She perceived
10 and treated me as someone that she was attracted to and
11 not someone of authority.

12 THE COURT: You have to speak up. I cannot
13 hear you. That may be my fault. I'm getting old, so --

14 THE DEFENDANT: She perceived me and treated me
15 as someone who she was attracted to and not someone of
16 authority.

17 Your Honor, this was not worth the torment and
18 anguish I would endure. It cost me everything. The loss
19 of my mother, my career, my pension, my dignity, my honor
20 and now my mental and physical health as I have been in
21 solitary confinement for 59 months. But I'm a man of
22 faith. I have a strong belief in God who believes that
23 in life that good and bad things happen for a reason.

24 I have overcome adversity growing up. I have
25 traveled to foreign land and witnessed the bombings on

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1 the battlefield proudly protecting our country. The
2 cancer I would fight years later from search, rescue, and
3 recovery at Ground Zero also protecting our country. But
4 this right here by far has been the toughest one because
5 there's no honor here. I have lost focus, let my guard
6 down, and I fell on my sword. This has sent a shock not
7 only to myself but to MDC as well.

8 I have expressed my regret, since remorse, and
9 my repentance to all this has affected and I express it
10 today to everyone here.

11 Life is a journey with many unpredictable
12 elements good and bad. Moving forward, I will continue
13 to strive for the good and that is my promise to you,
14 your Honor, for giving me a fair trial, to my children,
15 to my community, and to our country to which I proudly
16 served whenever called, through strength of my character
17 and my commitment to overcome this challenge with
18 dignity, humility, and faith. All of my community, my
19 family and friends and former coworkers have always been
20 supportive and stood by me because they know who I am.

21 Today, your Honor, I stand alone heartbroken,
22 extremely remorseful, and have learned a lot from this.
23 I take responsibility. I humbly ask for your mercy and
24 compassion not only for myself but for the sake of my
25 ailing grandmother, my children, grandchildren, and

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1 family to ask for a second chance to right my wrong.

2 I would also like to take this opportunity to
3 thank my lawyers for their hard work and dedication and
4 not abandoning me on the battlefield. To my aunt, there
5 are no words that can express the love and support she
6 has shown me. I've been truly blessed for having her by
7 my side.

8 Your Honor, I thank you for your fairness for
9 allowing me to address everyone here. Thank you.

10 THE COURT: Mark, Mark Gjelaaj is the Mark I'm
11 referring to for the record, I don't have to impose
12 separate sentence on each count, do I? I can give one
13 sentence here?

14 MR. GJELAJ: You would have to apply it to
15 every one of the counts though, your Honor. Yes.

16 THE COURT: I can't hear you.

17 MR. GJELAJ: You would have to impose,
18 depending on what your Honor's sentence is, you would
19 have to impose whatever the sentence your Honor is
20 imposing on each and every count to run concurrent
21 depending on what the sentence is. Now some of them have
22 maximum sentences and then you would have to sort of
23 fashion it in that way as well just to ensure that you
24 were within each of those counts, if your Honor
25 understands.

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1 THE COURT: I think I understand what you're
2 saying. Could you come up here for one minute?

3 (Pause in proceedings)

4 THE COURT: All right. I'm going to sentence
5 the defendant to the custody of the Attorney General for
6 a period of ten years on each count to run concurrently.
7 And I impose a special assessment, I guess it must be
8 \$1,000, or I can't count?

9 THE CLERK: 1,200.

10 THE COURT: \$1,200. And the defendant shall
11 comply with any applicable state or federal sex offender
12 registration requirements. This is a condition that --
13 I'm sorry, I should have also said five years supervised
14 release. The defendant shall comply as a special
15 condition of supervised release, the defendant shall
16 comply with any applicable state and/or federal sex
17 offender registration requirements as instructed by the
18 probation office, Bureau of Prisons, or any state
19 offender registration agency in the state where he
20 resides, works, or may be a student.

21 The defendant shall refrain from contacting the
22 victim of the offense unless specific permission is
23 granted by the probation department. This means that he
24 shall not attempt to meet in person, communicate by
25 letter, telephone, email, the internet, or through a

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1 third party without the knowledge and permission of the
2 probation department.

3 The defendant shall participate in a mental
4 health treatment program which may include participation
5 in a treatment program for sexual disorders as approved
6 by the U.S. Probation Department. The defendant shall
7 contribute to the cost of such services rendered or any
8 psychotropic medications prescribed to the degree he's
9 reasonably able financially and shall cooperate in
10 securing any applicable third party payment. The
11 defendant shall disclose all financial information and
12 documents to the probation department to assess his
13 ability to pay and his part of the treatment program for
14 sexual disorders. I actually do not think that that is
15 required. I don't think he has a sexual disorder. I
16 think that's sufficient. When I say I don't think he has
17 a sexual disorder, as I indicated earlier, he's not going
18 to go out and become a serial rapist. This crime for
19 which he was convicted was a crime that was because he
20 was in a special position that enabled him to do it.

21 I have taken seriously into account the
22 government's position but it seems to me there are a
23 number of factors here that suggest setting aside the
24 issues that are raised about my own discomfort with the
25 verdict. I accept, as I've often said at sentencing when

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1 people have raised issues about the jury's verdict that I
2 have to accept the verdict whether I agree with it or
3 not, and I'm not sure that I disagree with it. I
4 certainly would not quarrel that the jury could have
5 reached that verdict. But they did acquit him of four of
6 the five most serious offenses.

7 The considerations that I've taken into
8 account, first, the life that the defendant led, his
9 military service which began at the age of 18 which he
10 served four years in a position which often involved
11 potential risk of life that in the course of while he
12 worked at the MDC he actually helped save someone's life
13 possibly at the risk of his own.

14 In addition, the defendant worked at the World
15 Trade Center after the tragedy of 9/11. I think he
16 worked for four months. There's of course a high cancer
17 rate of people who worked during the period. He was part
18 of an emergency service unit for a week after the attacks
19 to do search, rescue, and recovery and thereafter he
20 volunteered for approximately four months to help clean
21 up the operation. And you know, he does have cancer.
22 And according to the pre-sentence report and the records
23 received from the Mount Sinai World Trade Center Health
24 confirmed that the defendant is a participant in the
25 World Trade Center medical monitoring and treatment

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1 program. So those are factors that I think deserve to be
2 taken into account.

3 In addition, he did undergo two trials himself
4 and whatever difficulties that may pose to the victim, it
5 also poses to a defendant which is of course, although
6 there was no double jeopardy violation, the
7 considerations are similar to those that underlie the
8 double jeopardy clause in terms of the effect of multiple
9 trials.

10 So I take all of those factors into account. I
11 think that the offense is a serious one, as I've said
12 during the colloquy. I am repeating myself I know. The
13 deterrence is not necessary to deter him from doing this
14 again because you won't, but one has to be concerned
15 about deterring people who work at the Metropolitan
16 Correction Center that conduct of this kind will not go
17 unpunished. This was a case involving one individual,
18 whatever the circumstances were, that led to it coming to
19 pass. I think a sentence of ten years for someone who is
20 of his age and who has potential health problems,
21 although his cancer is in remission, is a reasonable and
22 just sentence under the sentencing guidelines.

23 I'm sorry I kept you here so long.

24 MS. GEDDES: Your Honor, will you advise the
25 defendant of his right to appeal as well?

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1 THE COURT: Yes. You have the right to appeal,
2 Mr. Martinez, and if you can't afford to pay the filing
3 fee that we charge, I'll let you file the notice of
4 appeal without paying the filing fee and of course Mr.
5 Ricco can file the notice of appeal if you wish to
6 appeal.

7 MR. RICCO: Yes, Judge. I was going to ask on
8 behalf of the defendant that you give him in forma
9 pauperis relief as he goes forward. Your Honor gave him
10 in forma pauperis relief at the beginning of the first
11 trial because he got the transcripts and whatnot. He
12 has --

13 THE COURT: I granted that. I thought I said
14 if he can't -- I mean I thought that sort of encompassed
15 it when I say if you can't afford to pay the filing fee
16 I'll let you do it without paying the filing fee.

17 MR. RICCO: Okay, Judge.

18 THE COURT: But yes, I grant him leave to
19 proceed in forma pauperis.

20 MR. RICCO: Okay. Thank you. The magic words
21 that the Circuit likes to hear.

22 THE COURT: Okay. And despite our heated
23 discussion, I thank the government lawyers for their
24 help. It's always useful to be challenged.

25 MS. SHIHATA: And Judge, I apologize if I

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1 overstepped.

2 THE COURT: No, I don't mind at all. In fact,
3 I encourage my law clerks to do it. It helps make for a
4 better outcome when you're challenged by bright people.
5 Okay. Thank you.

6 MR. RICCO: So Judge, normally I would ask that
7 the Court make a recommendation that the defendant be
8 housed in the metropolitan area. However, because of his
9 law enforcement status, his housing is problematic. So I
10 would just ask to the extent that the Bureau of Prisons
11 can, given its other concerns, that the defendant be
12 housed in the metropolitan area as close to it as
13 possible.

14 THE COURT: Okay. I'm going to rely on Mark
15 Gjelaaj to help me formulate this. Where he is now is in
16 the metropolitan area. I gather you're not enamored of
17 it.

18 MR. RICCO: Well, it's a county detention
19 facility.

20 THE COURT: I know.

21 MR. RICCO: Yeah. But he would --

22 THE COURT: Because they're the Bureau of
23 Prisons, I assume they'd want to house him at a Bureau of
24 Prisons facility.

25 MR. RICCO: Yeah. They don't sentence federal

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1 prisoners in Essex. It's just a detention facility.

2 THE COURT: Right. I'll recommend -- if you
3 want to send me a letter with a recommendation, fine. If
4 not, I'll work out something with Mark Gjelaaj.

5 MR. RICCO: No, that's fine, Judge. Because of
6 his law enforcement status, they have a special protocol
7 for that.

8 THE COURT: Well, I don't know, there are law
9 enforcement people in various federal --

10 MR. RICCO: Yes, Judge.

11 THE COURT: Okay. Thank you.

12 MS. SHIHATA: Thank you, your Honor.

13 MS. GEDDES: Thank you, your Honor.

14 (Matter concluded)

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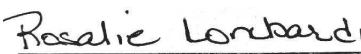
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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 19th day of April, 2022.



Transcriptions Plus II, Inc.
Rosalie Lombardi
AAERT# CET-656